

G-008/C-91-942 ORDER AFFIRMING DECISION CERTIFIED BY
ADMINISTRATIVE LAW JUDGE

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm
Tom Burton
Marshall Johnson
Cynthia A. Kitlinski
Dee Knaak

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Complaint
of the Minnesota Alliance for
Fair Competition Against
Minnegasco, a Division of Arkla,
Inc.

ISSUE DATE: October 7, 1993

DOCKET NO. G-008/C-91-942

ORDER AFFIRMING DECISION
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JUDGE

PROCEDURAL HISTORY

On May 5, 1993, the Commission issued its NOTICE AND ORDER FOR HEARING in the above-entitled matter. The Commission found that the main issue in the case, whether Minnegasco was subsidizing its unregulated appliance sales and service operations through its regulated utility operations, turned on specific facts best developed in evidentiary hearings. The Commission referred the case to the Office of Administrative Hearings, which assigned Administrative Law Judge (ALJ) Richard C. Luis to hear the matter.

On August 31, 1993, the Minnesota Alliance for Fair Competition (MAC) filed its Fourth Motion to Compel with the Office of Administrative Hearings. MAC sought information from Minnegasco regarding cost allocations from Arkla, Inc. (Arkla) to Minnegasco and Arkla's other divisions. In its Motion, MAC stated that Minnegasco had partly based an objection to MAC's discovery request on the following statement in the ALJ's August 24, 1993 Order Denying Mac's Third Motion to Compel Discovery:

As to allocation to the entities by Arkla, the issues in this case focus on how Minnegasco allocates costs internally, not how Arkla allocates costs to Minnegasco or the other operating entities. To grant this request would imply that the scope of this proceeding has been extended beyond what the Judge perceives to be the original intent of the Minnesota Public Utilities Commission.

On September 14, 1993, the ALJ issued his Orders on Motion to Compel Discovery and Order Certifying Portion of Motion. In that Order the ALJ granted certain discovery requests from MAC's

August 31, 1993 filing and denied certain other discovery requests. The ALJ explained the different treatment which he had applied to the two types of discovery requests. The request granted (No. 109) asked for "all cost apportionment policies and procedures used by" two Arkla divisions, Entex and Arkansas Louisiana Gas. The ALJ stated that this information could be relevant and within the scope of discovery if the Commission chose to examine alternative allocation techniques. Since the information has the "potential to be helpful," it should be provided by the Company.

The discovery requests which were denied (Nos. 104, 106, 107 and 108) sought a greater level of detail regarding Arkla's allocations to its various divisions. The information sought in these requests would include actual Arkla cost allocations, not its allocation policies and procedures. In this case, stated the ALJ, the reasoning quoted above from the ALJ's August 24, 1993 Order applies. The case before the Commission is about how Minnegasco allocates internally, not about how Arkla allocates to Minnegasco or its other entities. Because these requests sought information beyond the scope of the proceedings, the ALJ was inclined to deny the requests. Noting the importance of the question and the need to keep the discovery process moving, the ALJ certified the issue of his partial denial of MAC's Motion to Compel to the Commission.

The matter came before the Commission for consideration on September 23, 1993.

FINDINGS AND CONCLUSIONS

The Commission agrees with the ALJ that the scope of these complaint proceedings should be limited to Minnegasco's apportionment methods and results. The grounds of MAC's complaint are the possibilities of cross-subsidization between Minnegasco's regulated and unregulated entities. While Arkla's allocations to its various divisions are within the scope of the Commission's regulatory enquiry, they are not for the most part germane to these proceedings. The only exception is the background information on Arkla's alternative allocation techniques (Discovery Request No. 109), which the ALJ has deemed discoverable.

The Commission notes that Minnegasco's accounting and recordkeeping methods achieve essentially the same cost detail as they would if Minnegasco were a subsidiary, not a division, of Arkla. There should therefore be sufficient separate information to allow an investigation to focus solely on Minnegasco's allocations.

The Commission finds that the ALJ's denial of Discovery Requests Nos. 104, 106, 107 and 108 preserves the proper scope and focus of these proceedings. Information regarding the actual allocations (rather than allocation methods) from Arkla to its divisions would improperly broaden these proceedings beyond the cross-subsidization issues under investigation. The Commission also finds that an inappropriate broadening of this complaint would ultimately work to the harm of all parties concerned. Little if any information would be gained regarding the central issues, and much more time, effort and expense would be necessary to bring the proceedings to a conclusion.

The Commission will accept and adopt the ALJ's partial denial of MAC's August 31, 1993 Motion to Compel, as to Discovery Requests Nos. 104, 106, 107 and 108.

ORDER

1. The Commission accepts and adopts the ALJ's partial denial of MAC's August 31, 1993 Motion to Compel, as to Discovery Requests Nos. 104, 106, 107 and 108.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Susan Mackenzie
Acting Executive Secretary

(S E A L)